

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

ROBERT P. MOORE,)	
Appellant,)	
)	
)	
v.)	C.A. No.: 09A-03-006 FSS
)	
CREATIVE HOME SOLUTIONS,)	
and UNEMPLOYMENT)	
INSURANCE APPEAL BOARD,)	
Appellees.)	
)	

Submitted: May 11, 2010
Decided: June 25, 2010

ORDER

**Upon Appeal From the Unemployment Insurance Appeal Board –
*AFFIRMED***

1. Appellant, Robert P. Moore, filed a claim for unemployment insurance benefits after leaving work at Creative Home Solutions (“CHS”) on August 21, 2008. Moore contends he left with good cause, alleging CHS failed to provide a safe workplace and manpower to complete jobs. On August 21, 2008, after learning CHS’s president, Mike Biliunas, was unsatisfied with Moore’s work, Moore initiated a confrontational phone call with Biliunas, and then quit.

2. First, a claims deputy, then an appeals referee denied Moore's claim pursuant to 19 *Del. C.* § 3314(1), finding that Moore voluntarily ended his employment without cause.

3. The appeals referee's decision was mailed on December 18, 2008. Nineteen *Del. C.* § 3318(c) allows ten days for appeals to the Unemployment Insurance Appeal Board. The decision cautioned that Moore had until December 28, 2008 to appeal or the decision would become final. Because December 28, 2008 was a Sunday, Moore actually could have filed a timely appeal the next day, December 29, 2008.

4. Moore, claiming he did not receive the appeals referee's decision until December 29, 2008, appealed on December 30, 2008. Otherwise, Moore did not explain why his appeal was late.

5. The Board held Moore's appeal was untimely and not excused. The Board declined to exercise its discretion under 19 *Del. C.* § 3320 and admit the appeal. Accordingly, the appeals referee's decision became final. The Board's decision was mailed on February 19, 2009, and became final on March 2, 2009.

6. Moore filed this timely appeal March 10, 2009.¹ Here, Moore

¹See 19 *Del. C.* § 3323; see also *Lockwood v. Unemployment Comp. Comm'n*, 76 A.2d 311, 313 (Del. Super. 1950).

restates his previous contentions and asserts that the “State did not give [him] adequate time to respond” to the appeals referee’s decision.

7. As a reviewing authority, the court must first determine whether there is substantial evidence, such that a reasonable mind would find it adequate, to support the Board’s finding that Moore’s appeal was untimely.² Second, the court must determine whether the Board’s refusal to admit the untimely appeal was an abuse of discretion.³ The Board abused its discretion if it “exceeded the bounds of reason” or produced injustice by ignoring established law or practice.⁴

8. The ten-day period for appeals to the Board begins when the decision is mailed,⁵ and “[p]roperly addressed mail is presumed to be received by the addressee.”⁶ It is “reasonable to expect that a claimant awaiting an important decision . . . would regularly check the . . . mail.”⁷

²*Robledo v. Stratus*, 2001 WL 428684, at *1 (Del. Super. Mar. 27, 2001) (Ridgely, P.J.).

³*Id.*

⁴*Lilly v. State*, 649 A.2d 1055, 1059 (Del. 1994) (quoting *Firestone Tire & Rubber Co. v. Adams*, 541 A.2d 567, 570 (Del. 1988)).

⁵*Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 224 (Del. 1991).

⁶*Robledo*, 2001 WL 428684, at *1.

⁷*Funk*, 591 A.2d at 226

9. The record supports the Board's finding that the appeals referee's decision was properly mailed on December 18, 2008. As mentioned, Moore contends, but otherwise provides no evidence, that he received the decision on December 29, 2008, the last day for appeal. Moore submitted a photocopy of the envelope the decision came in. The postmark on the copy is illegible, and Moore claims the original is no better. Moore does not claim, nor is there evidence of, Department of Labor error. Moore appealed one day late, on December 30, 2008. Accordingly, the Board's finding that Moore's appeal was untimely is supported by substantial evidence.

10. Nineteen *Del. C.* § 3318(c) is jurisdictional, but the Board may admit untimely appeals under § 3320.⁸ This authority is only used "where . . . some [Department of Labor] error . . . deprived the claimant of the opportunity to file a timely appeal," or "where the interests of justice would not be served by inaction."⁹ If the Board did not abuse its discretion, its decision must be upheld.¹⁰

11. Assuming that the decision, despite having been mailed locally, did not arrive until eleven days later, Moore did not explain to the Board why he did

⁸*Robledo*, 2001 WL 428684, at *2.

⁹*Funk*, 591 A.2d at 225.

¹⁰*See id.*

not appeal as soon as he received the decision, which included notice of the deadline for appeal. In *Robledo v. Stratus*,¹¹ the Board did not abuse its discretion when it refused to admit an untimely appeal where, as here, there was no evidence of Department of Labor error and the claimant received the decision on the last day for appeal.¹² Thus, it appears the Board's decision did not exceed the bounds of reason nor did it ignore established law or practice.

12. Given the Board's practice restricting the use of its authority to admit untimely appeals to severe circumstances,¹³ lack of Department of Labor error, and because Moore did not explain why he failed to appeal when he received the appeals referee's decision on the last day for appeal, the Board did not abuse its discretion when it refused to admit Moore's untimely appeal.

13. Although it is not the basis for the decision here, it appears that had the Board considered it, there was little likelihood that the appeal would have succeeded. The appeals referee's determination that Moore failed to exhaust available administrative remedies and therefore, left without good cause, appears to have been supported by substantial evidence. Moore admitted he quit after

¹¹2001 WL 428684 (Del. Super. Mar. 27, 2001) (Ridgely, P.J.).

¹²*Id.* at *1–2.

¹³*See Funk*, 591 A.2d at 225 (“[T]he Board is extremely cautious in assuming jurisdiction over [late appeals]. . . . Such cases have been few and far between and involved circumstances much more severe than those in this case.”).

confronting the boss. Moore had to exhaust available remedies before quitting.¹⁴ The appeals referee concluded that Moore should have brought his concerns to Biliunas in a non-confrontational way, which Moore might have done initially, or even after he had cooled off.¹⁵ Again, the court is not deciding here whether the appeals referee's decision was right or wrong. The suggestion here is that the substantive decision does not seem arbitrary or illogical.

For the reasons presented in paragraph 1 thru 12, it appears the Board's finding that Moore's appeal was untimely is supported by substantial evidence. It further appears the Board's refusal to admit the untimely appeal was not an abuse of discretion. Accordingly, the Board's decision is **AFFIRMED**.

IT IS SO ORDERED.

/s/ Fred S. Silverman

Judge

cc: Prothonotary (Civil)
Robert P. Moore, *Pro Se*
Vanessa R. Tiradentes, Esquire
Phillip G. Johnson, Esquire

¹⁴*Christiana Care Health Sys. v. Thompson*, 2010 WL 532451, at *2 (Del. Super. Feb. 8, 2010) (Toliver, J.) (“[A] claimant must exhaust the administrative remedies made available . . . prior to receiving unemployment compensation. An employee must make a good faith attempt to resolve an issue . . . prior to terminating their employment.”).

¹⁵*See Wong v. SL Pharma Labs, Inc.*, 2009 WL 1143184, at *2 (Del. Super. Apr. 28, 2009) (Parkins, J.) (asserting that an employee who left following a dispute with his supervisor, and failed to address the situation with the employer later, failed to exhaust available remedies and quit without cause).